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8 *Attorneys for Complainant*

10 BEFORE THE
11 MEDICAL BOARD OF CALIFORNIA
12 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 800-2015-017972

14 PHILLIP DE EVANS BRETZ, M.D.
78-034 Calle Barcelona, Suite B
15 La Quinta, CA 92253

OAH No. 2019010387

16 Physician's and Surgeon's Certificate No. A
32596,

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

17 Respondent.
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19
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 PARTIES

23 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
24 of California (Board). She brought this action solely in her official capacity and is represented in
25 this matter by Xavier Becerra, Attorney General of the State of California, by LeAnna E. Shields,
26 Deputy Attorney General.

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2. Respondent Phillip De Evans Bretz, M.D. (Respondent), is represented in this proceeding by attorney Constance A. Endelicato, Esq., whose address is: 10960 Wilshire Blvd., 18th Floor, Los Angeles, CA 90024-3804

3. On or about July 5, 1978, the Board issued Physician's and Surgeon's Certificate No. A 32596 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2015-017972, and will expire on October 31, 2019, unless renewed.

JURISDICTION

4. On October 31, 2018, Accusation No. 800-2015-017972 was filed before the Board, and is currently pending against Respondent. A true and correct copy of Accusation No. 800-2015-017972 and all other statutorily required documents were properly served on Respondent on October 31, 2018. Respondent timely filed his Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. 800-2015-017972 is attached as Exhibit A and incorporated herein by reference as if fully set forth herein.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and fully understands the charges and allegations in Accusation No. 800-2015-017972. Respondent has also carefully read, fully discussed with counsel, and fully understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1. CULPABILITY

2. 8. Respondent does not contest that, at an administrative hearing, Complainant could
3. establish a *prima facie* case with respect to the charges and allegations contained in Accusation
4. No. 800-2015-017972 and that he has thereby subjected his license to disciplinary action.

5. 9. Respondent agrees that if he ever petitions for early termination or modification of
6. probation, or if the Board ever petitions for revocation of probation, all of the charges and
7. allegations contained in Accusation No. 800-2015-017972 shall be deemed true, correct and fully
8. admitted by Respondent for purposes of that proceeding or any other licensing proceeding
9. involving Respondent in the State of California.

10. 10. Respondent agrees that his Physician's and Surgeon's Certificate No. A 32596 is
11. subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in
12. the Disciplinary Order below.

13. CONTINGENCY

14. 11. This Stipulated Settlement and Disciplinary Order shall be subject to approval of the
15. Board. The parties agree that this Stipulated Settlement and Disciplinary Order shall be
16. submitted to the Board for its consideration in the above-entitled matter and, further, that the
17. Board shall have a reasonable period of time in which to consider and act on this Stipulated
18. Settlement and Disciplinary Order after receiving it. By signing this stipulation, Respondent fully
19. understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation
20. prior to the time the Board considers and acts upon it.

21. 12. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null
22. and void and not binding upon the parties unless approved and adopted by the Board, except for
23. this paragraph, which shall remain in full force and effect. Respondent fully understands and
24. agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and
25. Disciplinary Order, the Board may receive oral and written communications from its staff and/or
26. the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify
27. the Board, any member thereof, and/or any other person from future participation in this or any
28. other matter affecting or involving respondent. In the event that the Board does not, in its

1 discretion, approve and adopt this Stipulated Settlement and Disciplinary Order, with the
2 exception of this paragraph, it shall not become effective, shall be of no evidentiary value
3 whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party
4 hereto. Respondent further agrees that should this Stipulated Settlement and Disciplinary Order
5 be rejected for any reason by the Board, Respondent will assert no claim that the Board, or any
6 member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this
7 Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

8 ADDITIONAL PROVISIONS

9 13. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to
10 be an integrated writing representing the complete, final and exclusive embodiment of the
11 agreements of the parties in the above-entitled matter.

12 14. The parties agree that copies of this Stipulated Settlement and Disciplinary Order,
13 including copies of the signatures of the parties, may be used in lieu of original documents and
14 signatures and, further, that such copies shall have the same force and effect as originals.

15 15. In consideration of the foregoing admissions and stipulations, the parties agree the
16 Board may, without further notice to or opportunity to be heard by Respondent, issue and enter
17 the following Disciplinary Order:

18 DISCIPLINARY ORDER

19 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 32596 issued
20 to Respondent PHILLIP DE EVANS BRETZ, M.D., is hereby revoked. However, the revocation
21 is stayed and Respondent is placed on probation for three (3) years on the following terms and
22 conditions.

23 1. EDUCATION COURSE. Within 60 calendar days of the effective date of this
24 Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee
25 for its prior approval educational program(s) or course(s) which shall not be less than 40 hours
26 per year, for each year of probation. The educational program(s) or course(s) shall be aimed at
27 correcting any areas of deficient practice or knowledge and shall be Category I certified. The
28 educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to

1 the Continuing Medical Education (CME) requirements for renewal of licensure. Following the
2 completion of each course, the Board or its designee may administer an examination to test
3 Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65
4 hours of CME of which 40 hours were in satisfaction of this condition.

5 2. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of
6 the effective date of this Decision, Respondent shall enroll in a professionalism program, that
7 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1.
8 Respondent shall participate in and successfully complete that program. Respondent shall
9 provide any information and documents that the program may deem pertinent. Respondent shall
10 successfully complete the classroom component of the program not later than six (6) months after
11 Respondent's initial enrollment, and the longitudinal component of the program not later than the
12 time specified by the program, but no later than one (1) year after attending the classroom
13 component. The professionalism program shall be at Respondent's expense and shall be in
14 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

15 A professionalism program taken after the acts that gave rise to the charges in the
16 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
17 or its designee, be accepted towards the fulfillment of this condition if the program would have
18 been approved by the Board or its designee had the program been taken after the effective date of
19 this Decision.

20 Respondent shall submit a certification of successful completion to the Board or its
21 designee not later than 15 calendar days after successfully completing the program or not later
22 than 15 calendar days after the effective date of the Decision, whichever is later.

23 3. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this
24 Decision, Respondent shall submit to the Board or its designee for prior approval as a practice
25 monitor, the name and qualifications of one or more licensed physicians and surgeons whose
26 licenses are valid and in good standing, and who are preferably American Board of Medical
27 Specialties (ABMS) certified. A monitor shall have no prior or current business or personal
28 relationship with Respondent, or other relationship that could reasonably be expected to

1 compromise the ability of the monitor to render fair and unbiased reports to the Board, including
2 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree
3 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

4 The Board or its designee shall provide the approved monitor with copies of the Decision
5 and Accusation, and a proposed monitoring plan. Within 15 calendar days of receipt of the
6 Decision, Accusation, and proposed monitoring plan, the monitor shall submit a signed statement
7 that the monitor has read the Decision and Accusation, fully understands the role of a monitor,
8 and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the
9 proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed
10 statement for approval by the Board or its designee.

11 Within 60 calendar days of the effective date of this Decision, and continuing throughout
12 probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall
13 make all records available for immediate inspection and copying on the premises by the monitor
14 at all times during business hours and shall retain the records for the entire term of probation.

15 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective
16 date of this Decision, Respondent shall receive a notification from the Board or its designee to
17 cease the practice of medicine within three (3) calendar days after being so notified. Respondent
18 shall cease the practice of medicine until a monitor is approved to provide monitoring
19 responsibility.

20 The monitor shall submit a quarterly written report to the Board or its designee which
21 includes an evaluation of Respondent's performance, indicating whether Respondent's practices
22 are within the standards of practice of medicine, and whether Respondent is practicing medicine
23 safely, billing appropriately or both. It shall be the sole responsibility of Respondent to ensure
24 that the monitor submits the quarterly written reports to the Board or its designee within 10
25 calendar days after the end of the preceding quarter.

26 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of
27 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
28 name and qualifications of a replacement monitor who will be assuming that responsibility within

1 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
2 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
3 notification from the Board or its designee to cease the practice of medicine within three (3)
4 calendar days after being so notified. Respondent shall cease the practice of medicine until a
5 replacement monitor is approved and assumes monitoring responsibility.

6 In lieu of a monitor, Respondent may participate in a professional enhancement program
7 approved in advance by the Board or its designee that includes, at minimum, quarterly chart
8 review, semi-annual practice assessment, and semi-annual review of professional growth and
9 education. Respondent shall participate in the professional enhancement program at Respondent's
10 expense during the term of probation.

11 4. PROHIBITED PRACTICE. During probation, Respondent is prohibited from
12 performing cryoablation procedures unless performed as part of an approved Institutional Review
13 Board (IRB) clinical study and protocol. After the effective date of this Decision, all patients
14 being treated by the Respondent shall be notified that the Respondent is prohibited from
15 performing cryoablation procedures unless performed as part of an approved Institutional Review
16 Board (IRB) clinical study and protocol. Any new patients must be provided this notification at
17 the time of their initial appointment.

18 Respondent shall maintain a log of all patients to whom the required oral notification was
19 made. The log shall contain the: 1) patient's name, address and phone number; 2) patient's
20 medical record number, if available; 3) the full name of the person making the notification; 4) the
21 date the notification was made; and 5) a description of the notification given. Respondent shall
22 keep this log in a separate file or ledger, in chronological order, shall make the log available for
23 immediate inspection and copying on the premises at all times during business hours by the Board
24 or its designee, and shall retain the log for the entire term of probation.

25 5. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the
26 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the
27 Chief Executive Officer at every hospital where privileges or membership are extended to
28 Respondent, at any other facility where Respondent engages in the practice of medicine,

1 including all physician and locum tenens registries or other similar agencies, and to the Chief
2 Executive Officer at every insurance carrier which extends malpractice insurance coverage to
3 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15
4 calendar days. This condition shall apply to any change(s) in hospitals, other facilities or
5 insurance carrier.

6 6. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE
7 NURSES. During probation, Respondent is prohibited from supervising physician assistants and
8 advanced practice nurses.

9 7. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules
10 governing the practice of medicine in California and remain in full compliance with any court
11 ordered criminal probation, payments, and other orders.

12 8. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
13 under penalty of perjury on forms provided by the Board, stating whether there has been
14 compliance with all the conditions of probation.

15 Respondent shall submit quarterly declarations no later than 10 calendar days after the end
16 of the preceding quarter.

17 9. GENERAL PROBATION REQUIREMENTS.

18 Compliance with Probation Unit

19 Respondent shall comply with the Board's probation unit.

20 Address Changes

21 Respondent shall, at all times, keep the Board informed of Respondent's business and
22 residence addresses, email address (if available), and telephone number. Changes of such
23 addresses shall be immediately communicated in writing to the Board or its designee. Under no
24 circumstances shall a post office box serve as an address of record, except as allowed by Business
25 and Professions Code section 2021(b).

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1 Place of Practice

2 Respondent shall not engage in the practice of medicine in Respondent's or patient's place
3 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
4 facility.

5 License Renewal

6 Respondent shall maintain a current and renewed California physician's and surgeon's
7 license.

8 Travel or Residence Outside California

9 Respondent shall immediately inform the Board or its designee, in writing, of travel to any
10 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty
11 (30) calendar days.

12 In the event Respondent should leave the State of California to reside or to practice,
13 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of
14 departure and return.

15 10. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be
16 available in person upon request for interviews either at Respondent's place of business or at the
17 probation unit office, with or without prior notice throughout the term of probation.

18 11. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
19 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
20 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
21 defined as any period of time Respondent is not practicing medicine as defined in Business and
22 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
23 patient care, clinical activity or teaching, or other activity as approved by the Board. If
24 Respondent resides in California and is considered to be in non-practice, Respondent shall
25 comply with all terms and conditions of probation. All time spent in an intensive training
26 program which has been approved by the Board or its designee shall not be considered non-
27 practice and does not relieve Respondent from complying with all the terms and conditions of
28 probation. Practicing medicine in another state of the United States or Federal jurisdiction while

1 on probation with the medical licensing authority of that state or jurisdiction shall not be
2 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
3 period of non-practice.

4 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
5 months, Respondent shall successfully complete the Federation of State Medical Boards's Special
6 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program
7 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model
8 Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

9 Respondent's period of non-practice while on probation shall not exceed two (2) years.

10 Periods of non-practice will not apply to the reduction of the probationary term.

11 Periods of non-practice for a Respondent residing outside of California will relieve
12 Respondent of the responsibility to comply with the probationary terms and conditions with the
13 exception of this condition and the following terms and conditions of probation: Obey All Laws;
14 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or
15 Controlled Substances; and Biological Fluid Testing..

16 12. COMPLETION OF PROBATION. Respondent shall comply with all financial
17 obligations (e.g., restitution, probation costs) no later than 120 calendar days prior to the
18 completion of probation. Upon successful completion of probation, Respondent's certificate shall
19 be fully restored.

20 13. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
21 of probation is a violation of probation. If Respondent violates probation in any respect, the
22 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
23 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,
24 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have
25 continuing jurisdiction until the matter is final, and the period of probation shall be extended until
26 the matter is final.

27 14. LICENSE SURRENDER. Following the effective date of this Decision, if
28 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy


1 the terms and conditions of probation, Respondent may request to surrender his or her license.
2 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in
3 determining whether or not to grant the request, or to take any other action deemed appropriate
4 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
5 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its
6 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject
7 to the terms and conditions of probation. If Respondent re-applies for a medical license, the
8 application shall be treated as a petition for reinstatement of a revoked certificate.

9 15. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
10 with probation monitoring each and every year of probation, as designated by the Board, which
11 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
12 California and delivered to the Board or its designee no later than January 31 of each calendar
13 year.

14 ACCEPTANCE

15 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
16 discussed it with my attorney, Constance A. Endelicato, Esq. I understand the stipulation and the
17 effect it will have on my Physician's and Surgeon's Certificate No. A 32596. I enter into this
18 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree
19 to be bound by the Decision and Order of the Medical Board of California.

20
21 DATED: 8-30-19

22 
PHILLIP DE EVANS BRETZ, M.D.
Respondent

23 I have read and fully discussed with Respondent Phillip De Evans Bretz, M.D. the terms
24 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
25 Order. I approve its form and content.

26
27 DATED: _____

28 CONSTANCE A. ENDELICATO, ESQ.
Attorney for Respondent

1 the terms and conditions of probation, Respondent may request to surrender his or her license.
2 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in
3 determining whether or not to grant the request, or to take any other action deemed appropriate
4 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
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9 15. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
10 with probation monitoring each and every year of probation, as designated by the Board, which
11 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
12 California and delivered to the Board or its designee no later than January 31 of each calendar
13 year.

14 ACCEPTANCE

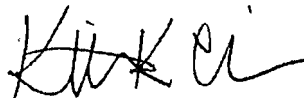
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18 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree
19 to be bound by the Decision and Order of the Medical Board of California.

20
21 DATED: _____

22 PHILLIP DE EVANS BRETZ, M.D.
Respondent

23 I have read and fully discussed with Respondent Phillip De Evans Bretz, M.D. the terms
24 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
25 Order. I approve its form and content.

26
27 DATED: 8/30/19

28  FOR:
CONSTANCE A. ENDELICATO, ESQ.
Attorney for Respondent

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DATED: 8.30.19

XAVIER BECERRA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General

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Exhibit A

Accusation No. 800-2015-017972

1 XAVIER BECERRA
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8 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Oct 31 20 18
BY [Signature] ANALYST

10 BEFORE THE
11 MEDICAL BOARD OF CALIFORNIA
12 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

14 In the Matter of the Accusation Against:

MBC Case No. 800-2015-017972

15 PHILLIP DE EVANS BRETZ, M.D.
16 78-034 Calle Barcelona, Suite B
La Quinta, CA 92253

ACCUSATION

17 Physician's and Surgeon's Certificate
18 No. A 32596,

19 Respondent.

21 Complainant alleges:

22 PARTIES

23 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
24 capacity as the Executive Director of the Medical Board of California, Department of Consumer
25 Affairs (Board).

26 2. On or about July 5, 1978, the Board issued Physician's and Surgeon's Certificate No.
27 A 32596 to Phillip De Evans Bretz, M.D. (Respondent). The Physician's and Surgeon's

28 ///

1 Certificate No. A 32596 was in full force and effect at all times relevant to the charges brought
2 herein and will expire on October 31, 2019, unless renewed.

3 JURISDICTION

4 3. This Accusation is brought before the Board, under the authority of the following
5 laws. All section references are to the Business and Professions Code (Code) unless otherwise
6 indicated.

7 4. Section 2227 of the Code states:

8 “(a) A licensee whose matter has been heard by an administrative law judge of
9 the Medical Quality Hearing Panel as designated in Section 11371 of the Government
10 Code, or whose default has been entered, and who is found guilty, or who has entered
11 into a stipulation for disciplinary action with the board, may, in accordance with the
12 provisions of this chapter:

13 “(1) Have his or her license revoked upon order of the board.

14 “(2) Have his or her right to practice suspended for a period not to exceed one
15 year upon order of the board.

16 “(3) Be placed on probation and be required to pay the costs of probation
17 monitoring upon order of the board.

18 “(4) Be publicly reprimanded by the board. The public reprimand may include a
19 requirement that the licensee complete relevant educational courses approved by the
20 board.

21 “(5) Have any other action taken in relation to discipline as part of an order of
22 probation, as the board or an administrative law judge may deem proper.

23 “(b) Any matter heard pursuant to subdivision (a), except for warning letters,
24 medical review or advisory conferences, professional competency examinations,
25 continuing education activities, and cost reimbursement associated therewith that are
26 agreed to with the board and successfully completed by the licensee, or other matters
27 made confidential or privileged by existing law, is deemed public, and shall be made
28 available to the public by the board pursuant to Section 803.1.”

5. Section 2234 of the Code, states, in pertinent part:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

“(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

“(b) Gross negligence.

“(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

“(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

“(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee’s conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

“ ”
111

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

6. Respondent has subjected his Physician's and Surgeon's Certificate No. A 32596 to disciplinary action under section 2227 and 2234, as defined by section 2234, subdivision (b), in that he committed gross negligence in his care and treatment of Patients A, B, and C,¹ as more particularly alleged hereinafter:

///

¹ For patient privacy purposes, patient identities have been withheld.

1 Patient A

2 7. On or about November 3, 2015, Patient A presented to Respondent for the first time
3 seeking a second opinion regarding treatment of a mass located in her right breast which had been
4 previously diagnosed as grade two mixed duct and lobular carcinoma for which Patient A's
5 oncologic surgeon had recommended mastectomy and reconstruction.

6 8. During the visit, Respondent discussed multiple treatment options and referred
7 Patient A to a website regarding surgical options and dictionary segments. Respondent also
8 discussed the potential for Patient A to undergo his Lavender Procedure, which involves
9 cryoablation of breast cancer.² Respondent determined Patient A was a candidate for his
10 Lavender Procedure.

11 9. On or about November 3, 2015, Patient A signed an informed consent form for
12 cryoablation of breast cancer. However, the informed consent form failed to adequately disclose
13 all the risks and complications of the procedure, including but not limited to, the chances of arm
14 swelling from a sentinel lymph node biopsy, the chance of the removal of more than one lymph
15 node, the chance of injury to the intercostal brachial nerve which may result in numbness to the
16 inner aspect of the arm. Additionally, the informed consent form was misleading in that it failed
17 to properly disclose the details of the experimental trial results and implied successful treatment
18 of breast cancer with cryoablation only, without any other modalities, such as radiation,
19 chemotherapy, or surgery.

20 10. On or about November 20, 2015, Patient A returned to Respondent for the Lavender
21 Procedure.

22 11. At no time did Respondent perform or offer to perform a sentinel node biopsy.

23 12. At no time did Respondent perform or offer to perform a partial mastectomy and
24 sentinel node excision or mastectomy and sentinel node excision.

25 ///

26 ///

27 ² "Lavender Procedure" is a cryoablation procedure in which Dr. Bretz uses extreme cold
28 temperatures to destroy breast cancer tissue. Cryoablation of breast carcinoma is experimental and is not
part of an approved Institutional Review Board (IRB) clinical study.

1 13. Respondent committed gross negligence in his care and treatment of Patient A, which
2 included, but was not limited to, the following:

3 A. Respondent failed to provide sufficient information regarding the Lavender
4 Procedure in order to obtain proper informed consent; and

5 B. Respondent failed to perform or offer to perform a sentinel node biopsy.

6 **Patient B**

7 14. On or about December 2, 2015, Patient B presented to Respondent for the first time
8 seeking a second opinion regarding treatment of a mass located in her left breast which had been
9 previously diagnosed as grade two infiltrating ductal carcinoma for which Patient B had
10 completed neoadjuvant chemotherapy with apparent complete clinical response.

11 15. During the visit, Respondent discussed multiple treatment options and discussed the
12 potential for Patient B to undergo his Lavender Procedure.

13 16. On or about December 5, 2015, Patient B returned to discuss treatment options with
14 Respondent, including mastectomy, lumpectomy, and Lavender Procedure. During this visit,
15 Respondent discussed the option of having a repeat sentinel node biopsy and Lavender Procedure.

16 17. On or about December 9, 2015, Patient B returned for a re-evaluation. During this
17 visit, Respondent again discussed the possibility of proceeding with the Lavender Procedure and
18 started Patient B on Tamoxifen.³

19 18. On or about December 31, 2015, Patient B returned for a final evaluation and
20 discussion regarding the option of the Lavender Procedure. According to progress notes for this
21 visit, Patient B decided to proceed with the Lavender Procedure.

22 19. On or about March 25, 2016, Patient B presented to review her current situation.
23 During this visit, progress notes indicate Respondent advised Patient B to consider surgical
24 treatment rather than the Lavender Procedure due to the original size of the tumor being four (4)
25 centimeters, positive nodes, and not having a definitive target.

26 ///

27 _____
28 ³ Tamoxifen is a dangerous drug pursuant to Business and Professions Code section 4022 used to
block the effects of estrogen. It is commonly used to treat and prevent breast cancer.

1 20. On or about May 11, 2016, Patient B presented to her oncologist, who discovered a
2 palpable mass in Patient B's breast. A subsequent MRI and biopsy revealed Patient B's tumor
3 had recurred.

4 21. Respondent committed gross negligence in his care and treatment of Patient B, which
5 included, but was not limited to, Respondent's failure to recognize the Lavender Procedure was
6 contraindicated during his initial visits with Patient B, resulting in a delay in appropriate
7 treatment, surgical procedure, to Patient B.

8 **Patient C**

9 22. On or about March 20, 2015, Patient C presented to Respondent for the first time
10 seeking consultation regarding treatment of recurring cancer in her left breast. Progress notes for
11 this visit indicate Patient C reported having a history of left breast cancer with treatment including
12 a lumpectomy and chemotherapy. Patient C was refusing any further surgery, chemotherapy or
13 radiation therapy and was requesting cryoablation. During the visit, Respondent prescribed
14 Tamoxifen and indicated there was not much to be done since Patient C was refusing any further
15 treatment.

16 23. On or about March 25, 2015, Patient C was seen by her oncologist and agreed to
17 reexcision of the biopsy cavity.

18 24. On or about March 31, 2015, Patient C returned to Respondent stating she had a
19 reaction to Tamoxifen. Progress notes for this visit indicate Respondent prescribed Patient C
20 Arimidex⁴ and informed Patient C that further surgical operation seemed inappropriate since she
21 now had positive margins and likely metastatic disease.

22 25. On or about April 7, 2015, Patient C returned to Respondent for a reevaluation of her
23 medications.

24 26. On or about June 26, 2015, Patient C returned to Respondent to discuss a recent visit
25 with a radiation oncologist who suggested proton therapy. Progress notes for this visit indicate
26 Respondent encouraged Patient C to continue taking Tamoxifen.

27 ⁴ Arimidex is a dangerous drug pursuant to Business and Professions Code section 4022 used to
28 lower estrogen levels. It is commonly used to stop or prevent tumor growth by blocking estrogen
production.

1 27. On or about November 4, 2015, Patient C returned to Respondent regarding a recent
2 MRI study. Progress notes for this visit indicate Respondent suspected possible recurrent
3 carcinoma of the left breast and recommended Patient C obtain a core biopsy with her oncologist
4 and return with her results.

5 28. On or about January 6, 2016, Patient C returned to discuss treatment options of the
6 recurrent carcinoma as determined by a recent core biopsy. Progress notes for this visit indicate
7 Respondent discussed the possibility of performing the Lavender Procedure due to Patient C's
8 refusal to have traditional therapy. Informed consent was given at this visit.

9 29. On or about January 16, 2016, Respondent performed the Lavender Procedure on
10 Patient C.

11 30. On or about March 16, 2016, Patient C underwent an ultrasound biopsy of the
12 cryoablation site which demonstrated infiltrating lobular carcinoma.

13 31. Respondent committed gross negligence in his care and treatment of Patient C, which
14 included, but was not limited to, Respondent's failure to recognize the Lavender Procedure was
15 not an appropriate treatment for Patient C, as cryoablation is not an appropriate treatment
16 alternative for recurrent breast cancer.

17 SECOND CAUSE FOR DISCIPLINE

18 (Repeated Negligent Acts)

19 32. Respondent has further subjected his Physician's and Surgeon's Certificate No. A
20 32596 to disciplinary action under sections 2227 and 2234, as defined by 2234, subdivision (c), in
21 that he committed repeated negligent acts in his care and treatment of Patients A, B, and C, as
22 more particularly alleged in paragraphs 6 through 31, which are hereby incorporated by reference
23 and realleged as if fully set forth herein.

24 THIRD CAUSE FOR DISCIPLINE

25 (Violations of the Medical Practice Act)

26 33. Respondent has further subjected his Physician's and Surgeon's Certificate No. A
27 32596 to disciplinary action under sections 2227 and 2234, as defined by 2234, subdivision (a), in
28 that he committed violations of the Medical Practice Act in his care and treatment of Patients A,

1 B, and C, as more particularly alleged in paragraphs 6 through 32, which are hereby incorporated
2 by reference and realleged as if fully set forth herein.

3 PRAYER

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Medical Board of California issue a decision:

6 1. Revoking or suspending Physician's and Surgeon's Certificate No. A 32596, issued
7 to Respondent Phillip De Evans Bretz, M.D.;


8 2. Revoking, suspending or denying approval of Respondent Phillip De Evans Bretz,
9 M.D.'s authority to supervise physician assistants and advanced practice nurses;

10 3. Ordering Respondent Phillip De Evans Bretz, M.D., if placed on probation, to pay the
11 Board the costs of probation monitoring; and

12 4. Taking such other and further action as deemed necessary and proper.

13
14 DATED:

15 October 31, 2018


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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